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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

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Coordination Proceeding )  
Special Title (Rule 1550(b)). )  
In re TOBACCO CASES II )  
This Document Relates to: ) JCCP No. 4042  
The People of the State of )  
California, and American )  
Environmental Safety Institute ) DEPOSITION OF  
v. Philip Morris Incorporated, )  
et al., Los Angeles Superior ) CHARLES BURNETT  
Court, Case No. BC 194217 )  
The People of the State of )  
California, City of San Jose, )  
and Paul Dowhall v. Brown & )  
Williamson Corp., et al., San )  
Francisco Superior Court, Case )  
No. 996781 )  
SERVICE LIST "B" )  
- - - - -

TAKEN ON: Wednesday, June 21, 2000

TAKEN AT: 401 B Street, Suite 1700  
San Diego, California

REPORTED BY: Jeannette K. Jessup  
CSR No. 8573, RPR

1

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18

19 BY: DANIEL E. EATON, ESQ.

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1 I N D E X

2	WITNESS	EXAMINED BY	PAGE
3	CHARLES BURNETT		
4		Ms. Frostrom	5
5			

6 E X H I B I T S

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C E R T I F I C A T E

2

I, the undersigned, do hereby certify that I have read  
the foregoing deposition and that, to the best of my  
knowledge, said deposition is true and accurate (with the  
exception of the following changes listed below):

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Page	Line	Explanation
5		
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CHARLES BURNETT

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SAN DIEGO, CA; WEDNESDAY, JUNE 21, 2000; 9:00 A.M.

2

3

CHARLES BURNETT,

4

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5

6

EXAMINATION BY MS. FROSTROM:

7

Q. What is your full name, please.

8

A. Charles Vance Burnett.

9

Q. Have you ever been deposed before?

10 A. Once.  
11 Q. How long ago was that?  
12 A. Eight or nine years ago.  
13 Q. What was the subject matter of the --  
14 A. It was a pharmacy -- Board of Pharmacy hearing.  
15 Q. Was that during employment at Costco?  
16 A. I'm sorry?  
17 Q. Was that during your employment at Costco?  
18 A. Yes.  
19 Q. Do you understand that you're under oath?  
20 A. Yes, I do.  
21 Q. And the oath that you were given today carries  
22 the same penalty of perjury as if you were testifying in  
23 court before a judge?  
24 A. Yes.  
25 Q. If there's any questions that you have as we go  
26 along, just let me know, and I'm sure we can accommodate  
27 it and take a break. You can confer with your counsel  
28 and clear up any questions that you might have. If I ask

5

1 a question that you don't understand, let me know, and  
2 I'll try to rephrase it, put it in a fashion that you  
3 feel you can answer it properly. If you do answer a  
4 question without indicating that you don't understand, we  
5 will be entitled later to argue in court that you  
6 understood the question and that you understood the  
7 answer that you were giving. Do you understand that?

8 A. I understand.

9 Q. When this is over, the court reporter will turn  
10 this deposition into a booklet. That will be forwarded  
11 to you for review. And you'll have an opportunity to  
12 review it, make any changes that you feel are necessary,  
13 and turn it back over to your counsel. If you make any  
14 substantive changes, we will then have the right to bring  
15 that up, if you testify at trial, and point out the  
16 changes that you made were actually substantive rather  
17 than possible typos. Do you understand that?

18 A. I understand.

19 Q. Okay. What is the name of your current  
20 employer?

21 A. Costco Wholesale Corporation.

22 Q. Where is the main office for Costco?

23 A. Issaquah, Washington.

24 Q. What is the address of the office where you  
25 work?

26 A. 999 Lake Drive, Issaquah, Washington, 98027.

27 Q. And what is the phone number there?

28 A. (425) 313-8157.

6

1 (Exhibit 4127 was marked for identification.)

2 BY MS. FROSTROM:

3 Q. I'm marking the Notice of Deposition of  
4 Defendant, Costco Companies, Incorporated, as Exhibit  
5 4127. Have you seen that before?

6 A. No.

7 Q. Let me switch with you. I gave you the copy  
8 that I marked.

9 MR. EATON: Could I see that one, please.

10 THE WITNESS: No, I have not seen this.

11 BY MS. FROSTROM:

12 Q. Could you review the items that are numbered 3,  
13 4, 5 and 6.

14 A. Okay.

15 Q. Are you prepared to testify today as the person  
16 most knowledgeable for Costco on those numbers 3, 4, 5  
17 and 6?  
18 A. As much as I can, yeah.  
19 Q. Okay. Now take a look at 10, 11, 12, 13 and 14.  
20 MR. KAMMER: You don't mean 12, do you? Because  
21 that's out.  
22 MS. FROSTROM: You said 12.  
23 MR. KAMMER: I'm sorry. That was because --  
24 MS. FROSTROM: Maybe because of the typo in your  
25 paper.  
26 MR. KAMMER: Yeah. I've just written a note  
27 that says "correct numbers."  
28 MS. FROSTROM: Okay. 10, 11, 13 and 14.

7

1 MR. KAMMER: Sorry.  
2 THE WITNESS: Okay.  
3 BY MS. FROSTROM:  
4 Q. And are you prepared to testify as the person  
5 most knowledgeable for Costco on those numbered items?  
6 A. Well, I would have limited knowledge on 14.  
7 Q. Okay. We'll explore the extent of your  
8 knowledge at some point later. Mr. Burnett, what is your  
9 title at Costco right now?  
10 A. Senior vice president of the corporation,  
11 general manager of the pharmacy division.  
12 Q. Those are two different titles?  
13 A. It's a combination.  
14 Q. What are your duties under that role?  
15 A. I oversee the entire operation of the pharmacy  
16 division, including operations, buying, administration.  
17 Q. Okay. So in overseeing the pharmacy operations,  
18 buying and administration are the two major tasks that  
19 come to mind?  
20 A. And operations.  
21 Q. And operations. What is it that you buy?  
22 A. Prescription pharmaceuticals and  
23 over-the-counter drugs.  
24 Q. Do you choose which prescriptions and  
25 over-the-counter drugs will be purchased?  
26 A. Well, prescription drugs are generally on the  
27 demand of the physician. You know, whatever a physician  
28 would write a prescription for, we would ultimately fill

8

1 that demand. The over-the-counter drugs, yes, I do.  
2 Q. And how do you decide which over-the-counter  
3 drugs to buy for your pharmacies?  
4 A. Well, we only carry 300 items of  
5 over-the-counter products. So we choose only those that  
6 are the highest demand.  
7 Q. Where does the 300 cap come from?  
8 A. Our internal limit on how many items we carry.  
9 Q. So that was a corporate decision that that was  
10 the cap that you --  
11 A. Right.  
12 Q. -- wanted in over-the-counter drugs?  
13 A. Right.  
14 Q. Is this true for all 220 Costco pharmacies?  
15 A. Yes.  
16 Q. And in your role as administrator, what tasks do  
17 you perform?  
18 A. Budgeting, staffing, purchasing of equipment.  
19 Just general management functions.

20 Q. Do you oversee the budgets for all of the  
21 pharmacies? Is that what you mean by budgeting?  
22 A. Yes.  
23 Q. And the staffing, are you the one that actually  
24 hires the people who work in the pharmacies, or do you  
25 set the staffing ratios? What is it that you do?  
26 A. I set the ratios, how many people they hire.  
27 They're generally hired by a supervisor.  
28 Q. How does the chain of command go from you down

9

1 to the actual pharmacists?  
2 A. Starts with me, and it goes to a vice president  
3 of pharmacy operations. Under him are seven regional  
4 supervisors. And then the pharmacy managers in each of  
5 the 220 pharmacies. And then the other staff pharmacists  
6 would report to the pharmacy manager.  
7 Q. Who hires the pharmacy managers?  
8 A. Generally the supervisor.  
9 Q. And who hires the staff pharmacists?  
10 A. Normally the pharmacy manager.  
11 Q. Do you know the names of the seven regional  
12 supervisors that you have?  
13 A. Yes.  
14 Q. Could you give those to me, please.  
15 A. Okay. David Glock, G-l-o-c-k. Greg Schapansky,  
16 S-c-h-a-p-a-n-s-k-y. Craig Norman. Gerry, G-e-r-r-y,  
17 Graf, G-r-a-f. Rick Duffy, D-u-f-f-y. Tom Drougas,  
18 D-r-o-u-g-a-s. And Mike Rofsky, R-o-f-s-k-y.  
19 Q. How many states does Costco operate in?  
20 A. I think 20 --  
21 Q. More than California?  
22 A. 28, I believe. I haven't counted.  
23 MR. KAMMER: It's like asking me how many  
24 lawyers we have in this firm. I don't know.  
25 THE WITNESS: I believe we're at 28 now.  
26 BY MS. FROSTROM:  
27 Q. Do the regional supervisors divide up their  
28 responsibility by geographical region, correct?

10

1 A. Correct.  
2 Q. Who is in charge of the California region?  
3 A. Well, there are three.  
4 Q. There's three?  
5 A. Right. Greg Schapansky, Craig Norman and Gerry  
6 Graf.  
7 Q. How is California divided amongst them?  
8 A. Northern California, L.A., San Diego.  
9 Q. And who matches up with which?  
10 A. Greg Schapansky is Northern California. Craig  
11 Norman is L.A. region. And Gerry Graf is San Diego.  
12 Q. As part of your administrative staffing role, do  
13 you provide job descriptions for the various people in  
14 control?  
15 A. We have rather rudimentary ones.  
16 Q. What is the job description for a pharmacy  
17 manager?  
18 A. Well, he has to be designated by the -- by the  
19 company as the one responsible for the license in that  
20 facility. And for everything that is required to comply  
21 with particular state's laws. And the hiring and firing  
22 of employees.  
23 Q. What are the licensing requirements in  
24 California, if you know?

25 A. Control of the drug inventory, security,  
26 compliance with regulations that -- on patient  
27 information. The labeling requirements of our  
28 prescription bottle. The dispensing requirements on

11

1 quantities and frequency. Probably others.

2 Q. Is there an agency that licenses pharmacies in  
3 California?

4 A. State Board of Pharmacy.

5 Q. Are pharmacies required to be licensed under the  
6 State Board of Pharmacy?

7 A. Yes.

8 Q. What about the individual pharmacists?

9 A. They also require a license from the same board.

10 Q. From the same board?

11 A. Uh-huh.

12 Q. Are there different licensing requirements to be  
13 a pharmacy manager than there are to be a staff  
14 pharmacist?

15 A. No.

16 Q. What are the basic licensing requirements to be  
17 a pharmacist or a pharmacy manager in California?

18 A. You have to have a recognized degree from a  
19 College of Pharmacy. You have to take a board exam and  
20 pass it. And you have to have certain amount of intern  
21 hours.

22 Q. Are there any continuing responsibilities?

23 A. Continuing education. 15 hours a year.

24 Q. 15?

25 A. Right. It's actually a biannual, 30 hours  
26 biannual.

27 Q. Is there someone within Costco who makes sure  
28 that the pharmacists are meeting their continuing

12

1 education requirements?

2 A. The vice president of operations. Well, through  
3 the supervisors they also make sure their licenses are up  
4 to date.

5 Q. Does Costco help the pharmacist get their  
6 continuing education, or is that their own  
7 responsibility?

8 A. It's their own responsibility.

9 Q. Are Costco pharmacists authorized to answer  
10 health questions?

11 A. Yes. Within the -- within the scope of their  
12 knowledge.

13 MR. EATON: Could I get the question back,  
14 please.

15 (Record read.)

16 MR. EATON: Thank you.

17 BY MS. FROSTROM:

18 Q. Does Costco provide any training programs to  
19 provide the pharmacist with a base of knowledge?

20 A. We have some specific disease-related programs  
21 that they can voluntarily take. One is for diabetes, and  
22 one is for asthma.

23 Q. Do those vary over time, what they focus on, the  
24 diabetes or asthma? Has it always been that, or does it  
25 vary?

26 A. I'm not quite sure what kind of answer you want.  
27 It's a specific program that's put on periodically so  
28 they can qualify or be recognized as accredited to manage

13

1 that disease state. And the program is available  
2 periodically strictly on a voluntary basis. I'm not sure  
3 what you want.  
4 Q. Maybe I need to understand your program better  
5 before I can ask you a question that you feel you can  
6 answer. Does Costco run these programs on diabetes and  
7 asthma?  
8 A. No.  
9 Q. Who does?  
10 A. Usually a company within that area of disease.  
11 It's usually funded by a pharmaceutical company.  
12 Q. How are these programs made available to your  
13 pharmacists?  
14 A. We communicate by memo or e-mail that it's  
15 available.  
16 Q. And how do you find out that the programs are  
17 available?  
18 A. Well, I have a person in my office who that's  
19 his specific responsibility to develop these programs.  
20 Q. This person contacts the outside agencies or  
21 they contact him?  
22 A. Both ways.  
23 Q. Why is it that right now there are only programs  
24 on diabetes and asthma?  
25 A. They're the two most noncompliant disease states  
26 that people end up in the hospital or emergency room.  
27 Q. What do you mean by "noncompliant"?  
28 A. Well, they don't take their medication right and  
14  
1 don't have good result, don't have good control.  
2 Q. And who decided to offer the programs under  
3 those two categories?  
4 A. Well, I ultimately decided that we would do it.  
5 Q. Are there other programs available that you  
6 could offer to your pharmacists?  
7 MR. EATON: Calls for speculation.  
8 BY MS. FROSTROM:  
9 Q. If you know.  
10 A. I don't know.  
11 Q. Have you ever contacted an organization, such as  
12 the American Lung Association, to see if they have  
13 educational programs for your pharmacists?  
14 A. No.  
15 Q. What is the name of the person that is in charge  
16 of the communications?  
17 A. Michael Mastromoinica. Do you want me to spell  
18 it? M-a-s-t-r-o-m-o-n-i-c-a.  
19 MR. KAMMER: That's what I would have guessed.  
20 BY MS. FROSTROM:  
21 Q. Does Costco have minimum job requirements to be  
22 a pharmacy manager, education, experience?  
23 A. Well, obviously you got to have a pharmacy  
24 degree and a license.  
25 Q. That's a good start.  
26 A. Yeah. A pharmacy degree and a license, and then  
27 a certain amount of experience. Some have more than  
28 others.

15

1 Q. Are the requirements the same for the staff  
2 pharmacists?  
3 A. Yes.  
4 Q. The pharmacy degree and the license obviously?  
5 A. Yes, clearly.



6 Q. Is there an experience level that you set for  
7 those positions?  
8 A. No. We hire them fairly early out of school  
9 and, you know, any stage of life.  
10 Q. Do you consider your pharmacists to be health  
11 professionals?  
12 A. Yes.  
13 Q. And do you consider them to be better educated  
14 than the average consumer or health issues?  
15 A. Yes.  
16 Q. And that's why you're able to make them  
17 available to answer the health-related questions?  
18 A. Correct. It's also required by law.  
19 Q. Which?  
20 A. Counseling.  
21 Q. Counseling is required by law?  
22 A. Uh-huh.  
23 Q. Does the company limit in any way the health  
24 questions that the pharmacists are permitted to ask?  
25 A. Ask or answer?  
26 Q. Answer. Thank you. Need more coffee.  
27 A. No. They're -- they have a professional  
28 license. So as long as it's within the scope of their

16

1 license, they can answer anything.  
2 Q. Have you ever had a problem with a pharmacist  
3 answering a question that a customer later complained  
4 about?  
5 A. Not that I know -- I'm aware of. I'm sure there  
6 could.  
7 Q. Have you ever become aware of a situation where  
8 a customer asked a pharmacist a question and the  
9 pharmacist was not able to answer?  
10 A. I'm not aware of that either. But I'm sure that  
11 happens also.  
12 Q. Is there a procedure to deal with that? What  
13 would the pharmacist say if somebody asked a question  
14 they couldn't answer?  
15 MR. EATON: Incomplete hypothetical.  
16 BY MS. FROSTROM:  
17 Q. That's going to happen from time to time. As  
18 long as you're not instructed not to answer, go ahead.  
19 A. You know, obviously not everybody knows  
20 everything about what kind of question's going to be  
21 asked. So I'm sure they run into questions that if they  
22 are intelligent, they would refuse to answer a question  
23 they are not knowledgeable. Or in a polite way, of  
24 course. Just say "I don't know."  
25 Q. Would they refer the customer to any other  
26 source?  
27 A. Probably back to their physician.  
28 Q. Are there any help lines or hotlines that Costco

17

1 provides as a backup to the pharmacists' questions?  
2 A. Only on the on-line pharmacy.  
3 Q. And what's available there?  
4 A. There's an 800 number.  
5 Q. But the over-the-counter pharmacists would never  
6 give that number out?  
7 A. I'm not saying -- I would not say "never." But  
8 ordinarily no. I mean, they're there to answer the  
9 questions. So why would they need the 800 number?  
10 Q. Even if they couldn't answer the questions, it's

11 not something they would give out?  
12 A. No. Not -- I mean, they could, but I don't  
13 think they would.  
14 Q. How long have you been with Costco?  
15 A. 14 years.  
16 Q. And how long have you held your current title?  
17 A. 14 years. Well, I started out as a vice  
18 president. And I was promoted.  
19 Q. Did you ever work as a pharmacist?  
20 A. For Costco?  
21 Q. For anyone.  
22 A. Yes.  
23 Q. And how long ago was that?  
24 A. Are you asking the last time I filled a  
25 prescription, you mean? Did I dispense the prescription?  
26 Q. How about we work back chronologically. Where  
27 did you work right before Costco?  
28 A. I owned a chain of pharmacies called Save-Mart

18

1 here in San Diego. Small chain. Four stores.  
2 Q. And how long did you own that chain?  
3 A. I started in '83, and I went to Costco in '86.  
4 But I maintained ownership until '87 or '88.  
5 Q. And you were the owner from 1983 until 1988?  
6 A. Yes.  
7 Q. And where were you before that?  
8 A. FedMart Corporation, San Diego.  
9 Q. Was that a pharmaceutical?  
10 A. No. It was a discount store chain.  
11 MR. KAMMER: I didn't mean to giggle. I've  
12 noticed this in relating to my son, some people weren't  
13 here when --  
14 MS. FROSTROM: You were back before.  
15 MR. KAMMER: There was always a FedMart.  
16 BY MS. FROSTROM:  
17 Q. And how long were you with FedMart?  
18 A. 18 years.  
19 Q. Did you hold the same title that entire time, or  
20 did you have various positions?  
21 A. I started as a staff pharmacist. Became a  
22 pharmacy manager. And then became vice president of the  
23 pharmacy.  
24 Q. And how long were you a staff pharmacist? An  
25 estimate is fine.  
26 A. I would guess five, six years.  
27 Q. And how long were you a pharmacy manager?  
28 A. About three.

19

1 Q. And for the remainder of the ten years you were  
2 vice president?  
3 A. Right.  
4 Q. I'm waking up. I can do math.  
5 MR. DI SAIA: It's the coffee.  
6 BY MS. FROSTROM:  
7 Q. Do you have a definition of what a pharmacy is?  
8 A. I could attempt one. I'm not sure that it would  
9 be a legal definition. It's a licensed facility where  
10 restricted drugs are dispensed on the order of a  
11 physician. And also sells various other things depending  
12 on the pharmacy. Ranging from, you know,  
13 over-the-counter drugs to motor oil.  
14 MR. DI SAIA: A more rare drug.  
15 BY MS. FROSTROM:

16 Q. I don't want to know what physical condition's  
17 related to that.  
18 A. Well, I mean, if you've been in one, they sell  
19 all kinds of stuff.  
20 Q. Yeah. So is the major emphasis of a pharmacy on  
21 sales?  
22 A. Well, it is a retail establishment. Yeah, I  
23 would say so.  
24 Q. What about the service aspect?  
25 A. It's part of it.  
26 Q. What is the purpose of having the service aspect  
27 to a pharmacy?  
28 MR. EATON: Vague.

20

1 THE WITNESS: Well, it helps the sales effort.  
2 The sales and service generally go together. Especially  
3 in a personalized service like the pharmacy.  
4 BY MS. FROSTROM:  
5 Q. Do any of the Costco pharmacies sell cigarettes?  
6 A. Not the pharmacy, no.  
7 Q. Why not?  
8 A. It's another part of the company.  
9 Q. Do the Costco pharmacies sell smoking cessation  
10 products?  
11 A. Yes.  
12 Q. Like Nicorette?  
13 A. Uh-huh.  
14 Q. How long have you carried those products?  
15 A. Well, at one time they were on prescription.  
16 Probably -- we probably had them ten years. They've been  
17 nonprescription for about the last three.  
18 Q. So within the past three years they've been  
19 considered over the counter?  
20 A. Correct.  
21 Q. Which means that they have to be high enough in  
22 sales to be included in the 300 --  
23 A. Correct.  
24 Q. -- permissible items? And have they  
25 consistently sold that way in all of your stores?  
26 A. I wouldn't say all. But majority, yes.  
27 Q. So the sales minimum for the 300 items is an  
28 average among all of the stores?

21

1 A. Right. Chainwide average.  
2 Q. And you sell the same 300 items in all of the  
3 stores?  
4 A. Yes.  
5 Q. There's no geographical variation or anything  
6 like that?  
7 A. Not in the 300 that are on display outside the  
8 prescription department.  
9 Q. Are there some additional products that are  
10 carried in some regions?  
11 A. Could be. But they're carried behind the  
12 counter.  
13 Q. Behind the counter meaning prescription?  
14 A. Right. People ask for them, and they order them  
15 from a wholesaler.  
16 Q. The over --  
17 A. Special order type thing.  
18 Q. The over-the-counter availability --  
19 A. Same thing.  
20 Q. -- doesn't change?

21 A. No.  
22 MR. EATON: There's cross-talk going on, and  
23 it's going to mess up the transcript.  
24 MR. KAMMER: Even though you're being helpful,  
25 try to let her answer the question before you begin your  
26 -- I mean ask the question before you begin your answer.  
27 Otherwise the court reporter will shoot us.  
28 THE WITNESS: Going nuts.

22

1 MS. FROSTROM: I may be getting too much  
2 caffeine. I'll try to slow down.  
3 MR. DI SAIA: It's that coffee again.  
4 BY MS. FROSTROM:  
5 Q. Do you market your pharmacies in any way,  
6 promote them?  
7 A. Not really, no. We don't -- as a company we  
8 don't advertise.  
9 Q. How do people become aware of the existence of a  
10 Costco pharmacy?  
11 A. Well, they first have to become a member of  
12 Costco. It's a membership club. And presumably when  
13 they walk in, they'll see it.  
14 Q. So you rely on visibility?  
15 A. Uh-huh. Yes.  
16 Q. Do you know what percent of the store business  
17 is conducted through the pharmacy?  
18 A. Yes.  
19 Q. What is that percentage?  
20 A. About 4-1/2 percent.  
21 Q. Is that a national average?  
22 A. Uh-huh. Yes. I'm sorry.  
23 Q. Do you know what the percentage would be for  
24 California?  
25 A. Not specifically. It's in that range, though.  
26 Q. Within your pharmacies are there libraries, for  
27 lack of a better term, of health information for your  
28 pharmacists to refer to?

23

1 A. I would not call it a library. They have  
2 reference -- a few reference books.  
3 Q. Reference books? What types of reference books?  
4 A. The most of them are drug related. You know,  
5 the side effects, chemical composition, dosage.  
6 Q. Like the PDR?  
7 A. Side effects, warnings. Contraindication.  
8 Q. Do you provide any written information for  
9 customer assistance?  
10 A. Occasionally -- well, you mean generally? Are  
11 you asking as a general?  
12 Q. Generally or within your awareness.  
13 A. When we dispense a prescription, along with that  
14 prescription there are -- there is some reference  
15 material about storage, when to take it, how to take it,  
16 side effects, when to call your physician if you're  
17 getting an adverse problem. That's part of the  
18 prescription dispenser. Occasionally, like in the  
19 smoking cessation things, there are leaflets that come  
20 along with the prescription item.  
21 Q. Would it be fair to say that any  
22 over-the-counter information that you provide of that  
23 nature would be something provided by the manufacturer?  
24 A. Correct.  
25 Q. And would you give it to a customer who wasn't

26 purchasing a product, or do they just get it when they  
27 purchase the product?  
28 A. The answer's no. 24

1 Q. I think I asked two questions in one there, and  
2 that may be unclear on the transcript. Would a customer  
3 get the information if they did not purchase the product?  
4 A. No.  
5 Q. Do your pharmacists ever recommend the use of a  
6 smoking cessation product?  
7 A. They could. I'm not -- it's not -- they're not  
8 instructed to do that.  
9 Q. But it would be within their job  
10 responsibilities?  
11 A. If in conversation with a patient that subject  
12 came up, they might.  
13 Q. Would they ever give advice on the health risks  
14 of secondhand smoke?  
15 MR. EATON: Incomplete hypothetical, lacks  
16 foundation.  
17 THE WITNESS: I'm not aware that they would.  
18 But, you know, I'm not there. So --  
19 BY MS. FROSTROM:  
20 Q. But they could?  
21 MR. EATON: Same objections.  
22 BY MS. FROSTROM:  
23 Q. They would be permitted to?  
24 MR. EATON: Same objections.  
25 THE WITNESS: It would be their own opinion. It  
26 would not be company policy.  
27 BY MS. FROSTROM:  
28 Q. Would it be an opinion or would it be based on 25

1 their knowledge?  
2 MR. EATON: Same objection and calls for  
3 speculation.  
4 MR. DI SAIA: What's the difference?  
5 THE WITNESS: Personally I would say opinion.  
6 Because I'm not so sure that secondhand smoke is proven  
7 to be detrimental. But that's my opinion.  
8 BY MS. FROSTROM:  
9 Q. I think you indicated before that they were  
10 authorized to answer health questions within the scope of  
11 their knowledge. Would this fall outside of that?  
12 MR. EATON: Vague as to "this."  
13 THE WITNESS: Well, I would say it's opinion,  
14 because I am not -- I have never seen anything myself  
15 personally that has brought certainty to the -- to that  
16 area of secondhand smoke. Now, they might read something  
17 that was contrary to my readings. They could.  
18 BY MS. FROSTROM:  
19 Q. So they might have gained knowledge on the  
20 subject that you don't have and give advice based on  
21 that?  
22 A. Anything's possible.  
23 MR. EATON: Incomplete hypothetical, calls for  
24 speculation.  
25 THE WITNESS: It's possible.  
26 BY MS. FROSTROM:  
27 Q. Does Costco have a policy or a procedure manual  
28 that the pharmacists use to perform their day-to-day job? 26

1 A. Yes. Operational, right.

2 Q. Is that an operational manual that would differ  
3 from the manual that the other employees would use?  
4 A. Well, it's specific to pharmacy.  
5 Q. What sorts of topics does that cover?  
6 A. Control of inventory, how to return expired  
7 drugs to the manufacturer, proper storage, inventory of  
8 narcotics. What else? Records. Pretty much a general  
9 outline, you know, of the day-to-day operation of the  
10 pharmacy.  
11 Q. Does any of it deal with customer relations?  
12 A. Yes.  
13 Q. What sorts of topics would that involve?  
14 A. Courtesy on the phone. Courtesy in the  
15 face-to-face meetings.  
16 Q. Would it cover the --  
17 A. Conduct.  
18 Q. I'm sorry. Would it cover the topic of  
19 answering questions over the counter or over the phone?  
20 A. No.  
21 Q. The focus is on conduct and demeanor?  
22 A. Uh-huh.  
23 Q. When Costco hires a pharmacist, is there a  
24 training program that each pharmacist has to go through?  
25 A. Generally it's on the job. It's very minimal.  
26 They go to an orientation same as any other employee.  
27 Q. So there is a general orientation session  
28 given --

27

1 A. Uh-huh.  
2 Q. -- by Costco?  
3 A. Uh-huh.  
4 Q. And that would involve what sorts of things?  
5 A. Company policy as it relates to conduct as it  
6 relates to dealings with members or customers. Dress  
7 code, hours of work, vacation, benefits, history of the  
8 company, mission statement.  
9 Q. Paperwork?  
10 A. Paper -- yeah, paperwork. Time cards.  
11 Q. And how long does that orientation last?  
12 A. I think it's about a two- or three-hour tape  
13 session.  
14 Q. It's presented by videotape?  
15 A. Uh-huh.  
16 Q. So all employees that start are shown the same  
17 identical videotape?  
18 A. Right.  
19 Q. Do you know the Costco mission statement?  
20 A. No.  
21 Q. When's the last time you've seen it?  
22 MR. KAMMER: How much did you invest in the  
23 mission statement?  
24 THE WITNESS: I've seen it numerous times. I  
25 don't remember what it is. Not verbatim anyway.  
26 MR. KAMMER: I'd like to know what American  
27 industry has paid for all of its mission statements.  
28 THE WITNESS: I had to answer truthfully because

28

1 you might ask me what it is.

2 BY MS. FROSTROM:

3 Q. Then I'll check you word for word and send it  
4 back to your company.

5 Does the pharmacy get information from outside  
6 sources, like I guess what I would generally call junk

7 mail, but information on seminars that are available?  
8 A. Oh, yeah. Uh-huh.  
9 Q. New research?  
10 A. Well, they have continuing education  
11 requirements. So, yeah, they get information on seminars  
12 fairly quickly.  
13 Q. That information generally goes to the pharmacy?  
14 A. Uh-huh.  
15 Q. Does it ever come to you?  
16 A. Yes.  
17 Q. What do you do with it when it comes to you?  
18 A. I look at it and -- I mean -- you mean do I  
19 disseminate it?  
20 Q. Sure.  
21 A. Not normally, no, because it all goes to the  
22 pharmacies too.  
23 Q. Have there ever been occasions where you have  
24 disseminated stuff like that that's come to you?  
25 A. Not that I can recall.  
26 Q. What are some of the organizations that send  
27 that information out?  
28 A. California Pharmacy Association. American

29

1 Pharmacy Association. You're talking about California,  
2 correct?  
3 Q. Yes.  
4 A. National Association of Chain Drug Stores.  
5 Q. So those are the three major --  
6 A. Three major.  
7 Q. -- sources of continuing education information  
8 through the mail?  
9 A. Uh-huh.  
10 Q. Are your pharmacists members of the California  
11 Pharmacy Association?  
12 A. Not all. Most are.  
13 Q. That's not a requirement?  
14 A. No.  
15 Q. Is it encouraged?  
16 A. Yes.  
17 Q. Why would one of your pharmacists not be a  
18 member?  
19 MR. EATON: Calls for speculation.  
20 BY MS. FROSTROM:  
21 Q. If you know.  
22 A. Probably don't want to pay the dues.  
23 Q. Costco doesn't cover the dues for that?  
24 A. No.  
25 Q. Are you a member of the California Pharmacy  
26 Association?  
27 A. Yes.  
28 Q. And of the American Pharmacy Association?

30

1 A. Yes.  
2 Q. And how about the last one, the National  
3 Association of Chain Drug Stores?  
4 A. Yes. Well, the company belongs to NAC, yes.  
5 And I'm the representative.  
6 Q. So the NACDS is not an individual membership  
7 organization?  
8 A. No.  
9 Q. It's a corporate membership?  
10 A. Company, right.  
11 Q. Do you agree with the California Pharmaceutical

12 Association's definition of a role of a pharmacist?  
13 MR. EATON: Lacks foundation.  
14 THE WITNESS: I don't recall exactly what it is.  
15 So --  
16 MS. FROSTROM: This is one of the exhibits that  
17 may be duplicate from Friday. Do you want me to put "A"?  
18 THE REPORTER: Yeah. That would be fine.  
19 BY MS. FROSTROM:  
20 Q. I'm going to show you what has been temporarily  
21 marked as Exhibit A until we find out if it was admitted  
22 on Friday. Could you read the first paragraph of Exhibit  
23 A.  
24 A. "The California Pharmacists Association (CPHA)  
25 and its staff and volunteers is the professional society  
26 representing all pharmacists in California. The mission  
27 of the association is to act as the leader in advocating  
28 the role of the pharmacist as an essential provider of  
31 health care and to support pharmacists in providing  
2 optimal pharmaceutical care."  
3 Q. Do you agree that the role of a pharmacist is an  
4 essential provider of health care?  
5 A. Yes.  
6 Q. And do you receive the California Pharmacist  
7 publication?  
8 A. Yes.  
9 Q. Do the pharmacies receive that publication?  
10 A. No. It's individual memberships. So --  
11 Q. It goes to the individual pharmacists? And do  
12 you receive the Insights newsletter?  
13 A. Yes.  
14 Q. And that too would go just to the individual --  
15 A. Individual.  
16 Q. -- pharmacists?  
17 THE REPORTER: I didn't get an answer.  
18 THE WITNESS: I said "yes."  
19 BY MS. FROSTROM:  
20 Q. Does the American Pharmaceutical Association  
21 have publications?  
22 A. They have a journal.  
23 Q. What's the name of that journal?  
24 A. Journal of the American Pharmaceutical  
25 Association.  
26 Q. Creative.  
27 MR. DI SAIA: Original.  
28 MR. KAMMER: Would you like to read the Journal  
32 of the American Bar Association? That's another  
2 original.  
3 MR. DI SAIA: That's equally interesting, I'm  
4 sure.  
5 BY MS. FROSTROM:  
6 Q. Do they have a newsletter?  
7 A. It's not like Insight. They send out periodic  
8 messages, and they're doing it most by e-mail now.  
9 Q. They do it on an as-needed basis?  
10 A. E-mail comes about once a week.  
11 Q. And since they've gone cyber, they don't really  
12 send out much by mail anymore?  
13 A. Correct.  
14 Q. What about the National Association Chain Drug  
15 Stores, do they have a publication?  
16 A. Yes.



17 Q. What is the name of that publication?  
18 A. I'm not sure of the exact name.  
19 Q. Do they have only one?  
20 A. It's only one. Yeah, well, they also send  
21 e-mail.  
22 Q. And they also send e-mail. Do the pharmacies  
23 receive the NACDS publication, or does that just come to  
24 you?  
25 A. They -- through me they send all of them to me  
26 at our office. And we disseminate it. They do get it.  
27 Q. Including the e-mails?  
28 A. No.

33

1 Q. How many copies do they send you?  
2 A. 220.  
3 Q. They send you 220?  
4 A. Right.  
5 Q. Just give them the addresses and let them send  
6 them out themselves. Do you know if you are considered  
7 by the California Pharmaceutical Association to be a  
8 tobacco-free pharmacy?  
9 A. I'm not aware. I don't know.  
10 Q. Did you know that they had that designation?  
11 A. No.  
12 Q. So you don't know what that means in their  
13 lexicon?  
14 A. No.  
15 Q. And you don't know why they think that that's  
16 important?  
17 MR. EATON: Objection; assumes facts not in  
18 evidence, calls for speculation.  
19 THE WITNESS: I don't know.  
20 BY MS. FROSTROM:  
21 Q. This one's going to be temporary Exhibit B.  
22 It's the last one we'll have to do this way. I'm showing  
23 you what has been temporarily marked as Exhibit B. Do  
24 you recognize that as a list of continuing education  
25 programs offered by the California Pharmaceutical  
26 Association?  
27 A. That's the title of it. Yeah, I recognize it as  
28 such.

34

1 Q. Do you know whether any of your pharmacists  
2 attended the April 2000 seminar on smoking cessation?  
3 A. No, I don't.  
4 Q. Did you attend that seminar?  
5 A. No.  
6 Q. Do your pharmacists submit to you lists of the  
7 educational programs that they participated in?  
8 A. No.  
9 Q. They just give you the total number of hours?  
10 A. No. They submit that to the Board of Pharmacy  
11 in order to get relicensed.  
12 Q. So when you're checking compliance of your  
13 pharmacists, you get that information from the Board of  
14 Pharmacy rather than from the individual pharmacists?  
15 A. We know if a pharmacist license is not renewed  
16 for lack of continuing education.  
17 Q. They notify you if that happens?  
18 A. They know, right.  
19 Q. But you don't get complete --  
20 A. No.  
21 Q. -- compliance lists for --

22 A. No.  
23 Q. -- each pharmacist?  
24 A. No.  
25 Q. Safe to assume that you have a degree in  
26 pharmacy?  
27 A. Yes.  
28 Q. From what institution?

35

1 A. University of Arizona.  
2 Q. And that's a Bachelor's level degree?  
3 A. Uh-huh. Bachelor of Science.  
4 Q. I wanted a B.S. just so I could say I had one.  
5 Do you have any other degrees?  
6 A. I have a -- I have a law degree from the  
7 University of San Diego.  
8 Q. Oh, no.  
9 A. Which I have never practiced.  
10 MR. DI SAIA: Smart man.  
11 BY MS. FROSTROM:  
12 Q. When did you get your law degree?  
13 A. 1970.  
14 Q. And when did you get your pharmacy degree?  
15 A. 1959.  
16 Q. Do you have any other degrees?  
17 A. No.  
18 Q. Are you licensed as a pharmacist in any states?  
19 A. Arizona, California.  
20 Q. That's it?  
21 A. That's all.  
22 Q. And do you maintain the licenses in those  
23 states?  
24 A. Yes.  
25 Q. Does Arizona have continuing education  
26 requirements?  
27 A. Yes.  
28 Q. And what are those?

36

1 A. Same. 30 hours biannual.  
2 Q. Is there any special training provided when a  
3 pharmacist becomes a pharmacy manager?  
4 MR. EATON: Objection; by whom? Costco?  
5 MS. FROSTROM: Costco.  
6 MR. EATON: Okay.  
7 MS. FROSTROM: Sorry. We're back to the  
8 specifics now.  
9 THE WITNESS: They will work with a supervisor  
10 for a period of time.  
11 BY MS. FROSTROM:  
12 Q. One of the regional supervisors?  
13 A. Uh-huh.  
14 Q. Doing what sorts of things?  
15 A. The reports that they need, how to schedule  
16 staff.  
17 Q. Administrative?  
18 A. Administrative, yeah. Mostly administrative  
19 tasks.  
20 Q. Are they given any training on marketing?  
21 A. No.  
22 Q. How about ethics?  
23 A. They get that when they get their degree and  
24 their license. That's all part of their license.  
25 Q. Is there a continuing educational requirement on  
26 specifically ethics, like with the law degree?

27 A. That I don't recall. I do not -- I don't  
28 believe so.

37

1 Q. What sorts of ethics trainings are given in the  
2 licensing procedure?

3 A. Mostly about privacy. You know, the privacy of  
4 conversations or records. And the legal, you know --  
5 legal compliance on the various classes of drugs.

6 Q. Do the pharmacy managers at Costco get any  
7 training on health advising?

8 A. No.

9 Q. All of that is on the job?

10 A. Well, it's part of their educational process.  
11 So we assume they have that.

12 Q. Do the pharmacies at Costco operate as just  
13 another department of the store, or are they somehow  
14 segregated? If that doesn't make sense, I'll try and  
15 take it apart.

16 A. Well, they're owned by Costco. So they're just  
17 another department within the entire complex.

18 Q. Like the tire department, the bakery department?

19 A. Right.

20 Q. Is there any third-party involvement in the  
21 pharmacies, or is it all owned and controlled by Costco?

22 A. It's all owned and controlled.

23 Q. Do all Costco warehouses have pharmacies?

24 A. No.

25 Q. Do you know what the percentage is?

26 A. U.S. it's 90 plus percent. 220 out of 232.  
27 Canada's like 30 out of 59. And Mexico, they're all 18  
28 in Mexico. Not in the U.K. Not in Korea. Not in Taiwan

38

1 and not in Japan.

2 Q. I would say that certainly covers what we need  
3 to know for this lawsuit. Do you know if all the  
4 California Costcos have pharmacies?

5 A. I believe we have them in all now. We at one  
6 time did not. But there could be one or two that don't  
7 have them.

8 Q. Are there any aspects of the pharmacy operation  
9 that are left to the individual Costco store managers?

10 A. No.

11 Q. So all of the control of the pharmacy comes from  
12 you and on the chain that you've already described?

13 A. Correct.

14 Q. What relationship, if any, does the individual  
15 store manager have with the pharmacy?

16 A. He -- he works with the pharmacy on personnel  
17 matters. Anything that has to do with overall company  
18 policy.

19 Q. What kind of overall company policy do you mean  
20 when you say that?

21 A. Personnel issues about late to work, time card  
22 issues, harassment, dress code.

23 Q. The details?

24 A. Details, yeah.

25 Q. And all of the pharmacists are Costco employees?

26 A. Correct.

27 Q. I'm -- off the record.

28 (Recess taken.)

39

1 BY MS. FROSTROM:

2 Q. We're going to move into the web page now.

3 A. Okay.  
4 (Exhibit 4128 was marked for identification.)  
5 BY MS. FROSTROM:  
6 Q. I'm marking Bates Number C-IR-CC-1 as Exhibit  
7 4128. Do you recognize that as the entry page, the  
8 Costco web page?  
9 A. We call it the home page, right. Not a good  
10 one. We're in the process of revising it.  
11 Q. On the right-hand side there's a column of  
12 different departments. Pharmacy is one of those,  
13 correct?  
14 A. Correct.  
15 Q. And you click on that to get into the pharmacy  
16 side of the web page?  
17 A. Right. It's a site within a site.  
18 (Exhibit 4129 was marked for identification.)  
19 BY MS. FROSTROM:  
20 Q. Marking Bates C-IR-CC-2 as Exhibit 4129. When  
21 you click on the word "pharmacy," is that where you end  
22 up?  
23 A. Yes.  
24 Q. Within the pharmacy page you can get information  
25 on health and beauty?  
26 A. Yes.  
27 Q. On filling prescriptions?  
28 A. Right. Yes.

40

1 Q. And do you have procedures for ordering a  
2 prescription?  
3 A. Yes.  
4 Q. And checking the status of that?  
5 A. Yes.  
6 Q. Is that ordering available nationwide?  
7 A. Yes.  
8 Q. So California citizens could order pharmacies  
9 through this web page?  
10 A. Yes.  
11 Q. I also see there's a reference library, correct?  
12 A. Yes.  
13 Q. And you can access your patient information?  
14 A. Yes.  
15 Q. And then the other two there's something about  
16 the pharmacy and then a "contact us" page?  
17 A. Right.  
18 Q. The "contact us" page, what is the purpose of  
19 that?  
20 A. Provides an 800 number if somebody has questions  
21 that they can't get out of the reference library and  
22 patient information area.  
23 Q. Where does the 800 number go?  
24 A. To the Fulfillment Center, which is in Lynnwood,  
25 Washington.  
26 Q. Is that a Costco facility?  
27 A. Yes.  
28 Q. And is it staffed by Costco employees?

41

1 A. Yes.  
2 Q. And you said that the first source that they  
3 would go to generally would be the reference library?  
4 A. We would hope that.  
5 Q. Unless they were just too lazy and they wanted  
6 to call somebody?  
7 A. Right.

8 Q. In your reference library what information do  
9 you try to provide?  
10 A. Information about various disease states.  
11 Information about specific drugs.  
12 Q. And that's your 800 number. Is that staffed by  
13 pharmacists?  
14 A. Yes.  
15 Q. Licensed in what state?  
16 A. State of -- well, state of Washington primarily.  
17 Q. And are those pharmacists given specific  
18 training in answering health questions?  
19 A. No. Not any more than any other.  
20 Q. What would be the basis for their knowledge in  
21 answering the questions that customers call with?  
22 A. Education and training.  
23 Q. Knowledge acquired separate from Costco?  
24 A. Yes.  
25 Q. Is there any sorts of a reference library for  
26 the pharmacist answering the questions?  
27 A. There are reference materials, yes.  
28 Q. What reference materials are provided?

42

1 A. PDR, facts and comparisons, Remington  
2 pharmacological -- no. Remington's Practice of  
3 Pharmacy. And a pharmacology manual. I don't remember  
4 the name.  
5 Q. And a pharmacology?  
6 A. Pharmacology manual. But I don't remember the  
7 name specifically.  
8 Q. What is facts and comparisons?  
9 A. Pretty much what the title says. It gives facts  
10 on particular drugs and compares ones in the same  
11 therapeutic category with each other. Advantages,  
12 disadvantages, cost.  
13 Q. So do all of these reference materials pertain  
14 to the drug composition side effects and risks as opposed  
15 to general health states?  
16 A. I would say that's correct.  
17 Q. Is there any information provided on general  
18 health conditions, health states?  
19 A. Not in the manual form, no.  
20 Q. In any form?  
21 A. There's content on the Website.  
22 Q. And the 1-800, pharmacists are given that for a  
23 reference?  
24 A. They would ask them first.  
25 Q. They would refer the caller to the reference  
26 library?  
27 A. Right. If they can't answer it themselves, if  
28 you want more information, click on the reference

43

1 library.  
2 Q. Where else might they refer a caller?  
3 A. Poison Control Center if they were having a  
4 problem of that nature.  
5 Q. Anywhere else?  
6 A. And maybe some of the other health sites that  
7 are on. You know, Dr. Koop, K-o-o-p, and a few other.  
8 Healtheon M.D. is another one.  
9 Q. Are they given a list of authorized sites to  
10 refer people to?  
11 A. No. They probably developed a list. But I  
12 didn't give it to them.

13 Q. You don't know for sure whether or not such a  
14 list actually does exist?  
15 A. I do not.  
16 (Exhibit 4130 was marked for identification.)  
17 BY MS. FROSTROM:  
18 Q. Okay. If you click on the "reference library"  
19 section on Exhibit 4129, is this the page that comes up  
20 marked Exhibit 4130?  
21 A. I have to be honest with you, I don't know the  
22 exact sequence. But I believe you're correct.  
23 Q. And the selections here are pricing information,  
24 drug information and health and first aid?  
25 A. Yes.  
26 (Exhibit 4131 was marked for identification.)  
27 BY MS. FROSTROM:  
28 Q. Focusing specifically on the health and first

44

1 aid section, and marking Exhibit 4131, that is a search  
2 engine on the site, correct?  
3 A. Yes.  
4 Q. And this is how the visitors to the web page can  
5 find information on various health conditions and  
6 diseases?  
7 A. Yes.  
8 Q. Have you ever gone into this page and done a  
9 search on tobacco?  
10 A. Just prior to this meeting, yes.  
11 Q. Do you remember if information comes up when you  
12 do a search on tobacco?  
13 A. I found two, two spots.  
14 Q. What spots were those?  
15 A. One was on how to quit smoking. And the other  
16 was -- I don't remember exactly what the title was. Do  
17 you have those?  
18 MR. KAMMER: She's got them.  
19 THE WITNESS: One was just general information  
20 on smoking.  
21 BY MS. FROSTROM:  
22 Q. "How to stop smoking" would be the title of one?  
23 A. "How to stop smoking" was one of them.  
24 Q. And "Cigarette smoking and its health risks"?  
25 A. Right. That's the other one.  
26 Q. We must have done the same search. The  
27 information that came up, "Cigarette smoking and its  
28 health risks" and "How to stop smoking," who provides

45

1 that information?  
2 A. We buy that content from a company called  
3 Micromedics.  
4 Q. What is Micromedics?  
5 A. It's a company that sells content information on  
6 health issues.  
7 Q. How did you choose this particular service?  
8 A. Well, I was not the particular -- you know, it  
9 was recommended to me and I authorized it. There were  
10 probably five or six different content providers. And it  
11 was a combination of -- it was a combination of cost and  
12 -- and the information on the site. How good it was and  
13 how complete.  
14 Q. Who was the person that actually did the  
15 research on the service?  
16 A. Vic Curtis, C-u-r-t-i-s.  
17 Q. And did he do that search per your

18 recommendation order?  
19 A. Right. I had given him overall responsibility  
20 to develop the on-line pharmacy site.  
21 Q. Who decided to provide this health and first aid  
22 section of the Website?  
23 A. He recommended it. I approved it.  
24 Q. So this was his -- his idea?  
25 A. Well, you know, we probably discussed it  
26 somewhere along the way. But --  
27 Q. What is the purpose of providing this  
28 information?

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1 A. It is to make it a more attractive site because  
2 of the service aspect on the health information.  
3 Q. To provide a service for Costco customers or  
4 people who visit the --  
5 A. Correct.  
6 Q. -- Costco Website?  
7 A. Our overall objective was to try to make the  
8 Website as much like a face-to-face meeting that you  
9 might get in a retail pharmacy where you could talk to  
10 the pharmacist directly.  
11 Q. And after Mr. Curtis did his research and gave  
12 you the results, you authorized the use of Micromedics?  
13 A. I authorized the expenditure, right.  
14 Q. The expenditure? And Costco has authorized  
15 Micromedics to provide this health information through  
16 its Website, correct?  
17 A. We buy it and load it onto our own Website.  
18 It's not a link.  
19 Q. So you actually put it on?  
20 A. Uh-huh.  
21 Q. Is there anyone that ever went through the  
22 various informational pages to determine whether the  
23 information was accurate?  
24 A. No.  
25 Q. What was done along those lines, if anything,  
26 checking the information?  
27 A. Well, we -- you know, there were -- there are  
28 publications that should rank the -- how can I say it --

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1 the cost effectiveness and completeness of various  
2 providers. And we relied on that.  
3 Q. The cost effectiveness and the completeness, is  
4 accuracy one of the --  
5 A. Accuracy, I'm sure, yeah. I don't remember all  
6 the criteria. But --  
7 Q. And in offering this to your customers, are you  
8 relying on Micromedics to do the appropriate research to  
9 determine whether the information is accurate?  
10 A. Yes.  
11 Q. And you're providing it to your customers  
12 believing that it will be helpful?  
13 A. Yes.  
14 Q. And it will be accurate?  
15 A. Yes.  
16 Q. Have you ever placed any restrictions on what  
17 Micromedics information can be placed on the Costco  
18 Website?  
19 A. No. We buy it as a package.  
20 Q. What is the package?  
21 A. Diseases, drug information, health risks. They  
22 have a whole -- they probably have others that we don't

23 buy. But I don't know what they are.  
24 Q. Do you have a contract with Micromedics?  
25 A. Yes.  
26 Q. Who decides which diseases, drug information and  
27 health risks to include in the database that they give  
28 you?

48

1 A. Vic Curtis.  
2 Q. And how does he do that?  
3 A. He's a pharmacist, and he uses his -- his  
4 professional judgment as to what it would be good to put  
5 on.  
6 Q. Logistically how does he do it? Do they give  
7 him a list of information that can be provided and he  
8 circles?  
9 A. I don't know. I don't know what it was.  
10 Q. Do you know if there's information on diseases  
11 and health risks that Micromedics provides that you've  
12 chosen not to include on the Costco Website?  
13 A. No.  
14 Q. You don't know?  
15 A. No, I don't know. I don't -- I don't know what  
16 was -- if there was anything eliminated.  
17 Q. Do you know if your in-store pharmacists ever  
18 use this resource in giving health advice?  
19 A. No, I don't know. They would have to do it from  
20 home. They don't have Internet access at the pharmacy.  
21 Q. They don't?  
22 A. No.  
23 Q. Do they refer people to the web page if they're  
24 unable to answer a question?  
25 A. They could. I'm not aware of it.  
26 Q. But they are made aware of the existence?  
27 A. They know about the Website, sure.  
28 Q. So they know this information is out there?

49

1 A. Uh-huh.  
2 (Exhibit 4132 was marked for identification.)  
3 BY MS. FROSTROM:  
4 Q. Okay. Okay. I think as we already indicated,  
5 one of the sections that is provided on that page is  
6 entitled "How to stop smoking." Bates Numbers 12 through  
7 15. I'm going to mark that as Exhibit 4132. You have  
8 reviewed this section of the Website?  
9 A. Yes.  
10 Q. And one of the topics here on Exhibit 4132 is  
11 smoking cessation products, correct?  
12 A. What page is this?  
13 Q. First page, "How do I quit?"  
14 A. Okay. Yes.  
15 Q. And your pharmacies carry these various smoking  
16 cessation products?  
17 A. We carry the patches. We carry the chewing gum,  
18 and we have a prescription product.  
19 Q. So the nasal spray and pill are prescription?  
20 A. The pills are prescription. I don't think all  
21 of our pharmacies carry the nasal spray.  
22 Q. That would be one of the  
23 based-on-special-request products?  
24 A. Right. If a doctor wrote for it, we would order  
25 it.  
26 Q. Why would a pharmacist recommend the use of one  
27 of these products?



28           A.    If he were asked --

50

1           MR. DI SAIA:  Calls for speculation.

2           THE WITNESS:  If he or she were asked how they

3   -- someone could quit smoking or cut down on smoking,

4   they would recommend something like that.

5   BY MS. FROSTROM:

6       Q.   And these products would be necessary or helpful

7   in order to counteract the influences of the drug

8   nicotine, correct?

9       MR. EATON:  Calls for speculation, calls for an

10   expert opinion, lacks foundation, beyond the scope.

11       THE WITNESS:  They have nicotine in them.  The

12   prescription pill is not.  But the patch and the gum are

13   nicotine-based products.  They're replacement products

14   for cigarettes.

15   BY MS. FROSTROM:

16       Q.   So does Costco take the position that nicotine

17   is a drug?

18       MR. EATON:  Assumes facts not in evidence.

19       THE WITNESS:  No, I don't think that's a Costco

20   position, no.

21   BY MS. FROSTROM:

22       Q.   On Exhibit 4132 the first section entitled "Why

23   should I quit smoking?"  In the third bulleted item it

24   indicates there that nicotine is a drug, correct?

25       A.   It says that.

26       Q.   And this is information authorized by Costco,

27   correct?

28       MR. EATON:  Vague as to "authorized."

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1       THE WITNESS:  It's -- it's not -- it's -- you

2   know, we buy this as a complete content package, and we

3   don't edit it.  So I would say -- you know, I would not

4   necessarily authorize it specifically to say that it was

5   a drug.  But if it's a drug, it's a drug.

6   BY MS. FROSTROM:

7       Q.   But this is information that you've put out

8   there for your customers?

9       A.   Correct.

10       Q.   For your Website visitors?

11       A.   Right.  But it isn't a company policy statement.

12       Q.   But it is a statement authorized by Costco?

13       MR. EATON:  Vague as to "authorized."

14   Argumentative now.

15       MR. DI SAIA:  Asked and answered.

16       THE WITNESS:  There was a content package that

17   we purchased without editing.  And I'm not, you know --

18   we authorized the purchase of the package.  Whether or

19   not we -- it was authorized for specific line-by-line

20   items in the package, I would say no.

21   BY MS. FROSTROM:

22       Q.   And if you could look at Bates Number 13 where

23   it indicates "Tips to staying quit and coping," there's a

24   number of bullet items that describe the withdrawal

25   symptoms that can occur when people stop smoking,

26   correct?

27       A.   Correct.

28       Q.   And this is also provided on the Costco web

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1   page, correct?

2       A.   Correct.

3       Q.   Do withdrawal symptoms occur when someone is

4 trying to quit using an addictive drug?  
5 MR. DI SAIA: Objection; calls for medical  
6 opinion outside the scope of this deposition.  
7 MR. EATON: Argumentative.  
8 THE WITNESS: Well, I'm not a medical expert.  
9 So, you know, I don't know that in all cases that a  
10 withdrawal would be necessarily a fact. There are  
11 cravings.  
12 BY MS. FROSTROM:  
13 Q. And the smoking cessation products are  
14 recommended as nicotine replacements?  
15 A. Yes.  
16 Q. And those products are recommended in order to  
17 break the addiction that comes from smoking?  
18 MR. EATON: Same objection; calls for  
19 speculation, argumentative.  
20 THE WITNESS: Question again.  
21 MS. FROSTROM: Could you read the question.  
22 (Record read.)  
23 MR. EATON: Same objection.  
24 THE WITNESS: Yeah. I don't like the word  
25 "addiction." But it is to -- it's a -- an aid to help  
26 them stop smoking.  
27 BY MS. FROSTROM:  
28 Q. Does Costco take the position that cigarettes  
53  
1 are addictive?  
2 A. Costco has no position as far as I know.  
3 Q. Through its web page does Costco take the  
4 position that cigarettes are addictive?  
5 MR. KAMMER: Objection; asked and answered. I'm  
6 going to instruct the witness not to answer the question.  
7 You've already asked him generally on the first page of  
8 this exhibit about whether taking positions as expressed  
9 is that they bought the package. The content is what it  
10 is.  
11 BY MS. FROSTROM:  
12 Q. Do your pharmacists recommend that people stop  
13 smoking?  
14 MR. DI SAIA: Calls for speculation.  
15 THE WITNESS: I can't speak for pharmacists in  
16 general.  
17 BY MS. FROSTROM:  
18 Q. It would depend on what questions --  
19 A. One or two might. I don't know.  
20 Q. Would it depend on the questions that the  
21 customer was asking?  
22 MR. DI SAIA: Also calls for speculation.  
23 THE WITNESS: Yes, I would guess it would.  
24 BY MS. FROSTROM:  
25 Q. Are you familiar with the term "secondhand  
26 smoke"?  
27 A. Yes.  
28 Q. Were you familiar with that term before this  
54  
1 lawsuit?  
2 A. Oh, yeah. Yeah. It's in the -- you know, it's  
3 in the news.  
4 Q. What do you understand the term "secondhand  
5 smoke" to mean?  
6 A. It's smoke that someone may take into their  
7 lungs because someone nearby or in a room is smoking.  
8 Q. Through your employment at Costco, do you have

9 access to any research on secondhand smoking?  
10 A. No.  
11 Q. Have you ever received any information from  
12 cigarette manufacturers on the health risks of secondhand  
13 smoking?  
14 A. No.  
15 Q. I think you mentioned before that when you buy  
16 prescription drugs, you receive information on the health  
17 risk that comes from those drugs; is that correct?  
18 A. There's one specific drug that has a pamphlet  
19 that you dispense with the prescription.  
20 Q. More generally, though, all the prescription  
21 drugs that you carry in your pharmacies?  
22 A. They don't say anything about smoke, no.  
23 Q. No. But if they have health risks that go along  
24 with them, do you get that information when you get the  
25 drug?  
26 A. You get general information about side effects,  
27 contraindications, how to store it, how often to take it.  
28 Q. Who is it that provides that information to you?

55

1 A. It comes as a content also from a company called  
2 drug -- the company that provides it is a company called  
3 NDC. And it's -- I can't recall the specific name now.  
4 I might come back to it.  
5 Q. Is that a California specific company?  
6 A. No.  
7 Q. Or is it nationwide?  
8 A. It's nationwide.  
9 Q. Or perhaps with Costco should I say is it  
10 international?  
11 A. It's nationwide. They might be international,  
12 but we don't necessarily use them other places.  
13 Q. Do you know whether the NDC is composed of the  
14 manufacturers of various pharmaceuticals, or is it an  
15 independent organization?  
16 A. It's an independent organization. It's a data  
17 processing company.  
18 Q. It's almost similar to Micromedics in that  
19 respect they gather information?  
20 A. Not quite the same. They specifically are --  
21 yeah, they -- the drug content, yes. But they do a lot  
22 of other things that Micromedics don't.  
23 Q. That wasn't a trick question. I'm just trying  
24 to understand how they work.  
25 A. Right. It's a broader-based company than  
26 Micromedics.  
27 Q. Okay. Have you ever requested any information  
28 from any source on secondhand smoke?

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1 A. No.  
2 Q. Or on the health risks from secondhand smoke?  
3 A. No.  
4 Q. And you work at the main office of Costco,  
5 right?  
6 A. Yes.  
7 Q. So you've never disseminated any information on  
8 secondhand smoke?  
9 A. No, I have not.  
10 Q. Have you ever considered gathering that type of  
11 information?  
12 A. No, not specifically.  
13 Q. Have you ever considered doing any research on

14 secondhand smoke?  
15 A. No.  
16 Q. Are you familiar with Proposition 65?  
17 MR. EATON: Beyond the scope of the deposition  
18 notice.  
19 THE WITNESS: Is that the one on hazards?  
20 BY MS. FROSTROM:  
21 Q. It's on carcinogens.  
22 A. No. I didn't read it.  
23 Q. So are you aware that secondhand smoke is a  
24 listed carcinogen in California under Proposition 65?  
25 A. I'm not aware of that.  
26 (Exhibit 4133 was marked for identification.)  
27 BY MS. FROSTROM:  
28 Q. Back to Exhibit 4132 -- no. I'm sorry. We're  
57  
1 on to 4133 now. Let me give you another page. Bates  
2 Number C-IR-CC-9, 10 and 11. The title of this document  
3 is "Cigarette smoking and its health risks." And do you  
4 recognize this as information provided on the Costco web  
5 page by Micromedex?  
6 A. Yes.  
7 Q. Can you turn to Bates Number 10, second page.  
8 In the middle of the page is a section entitled "What is  
9 passive smoking?"  
10 A. Uh-huh.  
11 Q. Have you seen that section before?  
12 A. I read it yesterday.  
13 Q. In preparation for this deposition?  
14 A. Uh-huh. I mean, I didn't even know this was on  
15 the Website until I pulled it up.  
16 Q. Do you see the sentence there that indicates  
17 "Nonsmokers exposed to tobacco smoke have the same health  
18 risks as smokers"?  
19 A. I see it.  
20 Q. Does Costco agree with that statement?  
21 A. As a company?  
22 Q. Yes.  
23 A. No. I mean, I can't say that we do.  
24 Q. Do you know whether Costco has a position on  
25 that issue?  
26 A. No, I don't think we do.  
27 Q. Other than on this web page?  
28 MR. EATON: Objection; assumes facts not in  
58  
1 evidence, argumentative.  
2 THE WITNESS: Other than this, no.  
3 BY MS. FROSTROM:  
4 Q. Has Costco ever considered stopping the sale of  
5 cigarettes?  
6 MR. EATON: Lacks foundation. Also appears to  
7 be beyond the scope of this particular deposition.  
8 THE WITNESS: I'm not aware.  
9 BY MS. FROSTROM:  
10 Q. To your knowledge?  
11 A. To my knowledge, no.  
12 Q. You're not expected to be a psychic to answer  
13 this stuff. Even though sometimes it may sound like I'm  
14 asking you to do that.  
15 MR. KAMMER: You're the one that called it  
16 "stuff."  
17 BY MS. FROSTROM:  
18 Q. Does Costco recognize any inconsistency in

19 selling cigarettes in the same store where it operates a  
20 health professional organization?  
21 MR. DI SAIA: Calls for speculation.  
22 MR. KAMMER: Objection; argumentative.  
23 MR. EATON: Argumentative.  
24 BY MS. FROSTROM:  
25 Q. I think you can still answer that one.  
26 MR. KAMMER: You can answer it if you know the  
27 answer.  
28 THE WITNESS: I don't know the answer.

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1 BY MS. FROSTROM:  
2 Q. Did you know that Costco sells about 40 million  
3 cigarettes a year?  
4 A. No, I didn't know that.  
5 Q. Does it ever --  
6 A. I'm not surprised. But I didn't know that.  
7 Q. Does it ever get paid for giving its health  
8 advice --  
9 A. From --  
10 Q. -- through the pharmacy?  
11 A. No. In other words, are you asking me if we get  
12 money from tobacco companies?  
13 Q. No. If you get money from any source for giving  
14 out health advice.  
15 A. No.  
16 Q. But you get money for selling 40 million cartons  
17 of cigarettes a year?  
18 MR. EATON: Argumentative.  
19 THE WITNESS: You may know better than I. I  
20 don't know. Tim Rose might know.  
21 BY MS. FROSTROM:  
22 Q. Do you know if the Costco pharmacy has ever  
23 discontinued availability of any drug because you found  
24 out that it had excess danger?  
25 A. You mean -- we have not unilaterally  
26 discontinued carrying a drug that was still available.  
27 Q. Have you ever discovered that a drug was  
28 believed to be more dangerous than it provided benefit?

60

1 A. We're not a research organization. So I would  
2 say no.  
3 Q. If this were to occur, would the manufacturer  
4 tell you that?  
5 MR. EATON: Incomplete hypothetical, calls for  
6 speculation, lacks foundation.  
7 THE WITNESS: The normal procedure would be the  
8 food and drug administration would force a withdrawal of  
9 the drug off the market if it was detrimental. And all  
10 pharmacies would discontinue it.  
11 BY MS. FROSTROM:  
12 Q. Just to help you understand my point, Fen-Fen  
13 comes to mind. Did Costco pharmacies ever sell the  
14 Fen-Fen products?  
15 A. Yes. Sure.  
16 Q. Do you now sell the Fen-Fen products?  
17 A. Not Fen-Fen. We sell one of the Fens which is  
18 still legal.  
19 Q. When did you stop selling the whole product?  
20 A. Well, Fen-Fen was two different drugs. The FDA  
21 forced withdrawal of one of the two.  
22 Q. So you carried both drugs up until that  
23 withdrawal?

24 A. Yes.  
25 Q. Has Costco ever knowingly sold a product that  
26 kills when it's used as intended?  
27 A. No.  
28 MR. EATON: If you ask the next question, you  
61  
1 will cause an explosion in the room, Karen. So, you  
2 know, just save us the time.  
3 MS. FROSTROM: Off the record.  
4 (Discussion off the record.)  
5 BY MS. FROSTROM:  
6 Q. What actions, if any, has Costco taken to  
7 prevent secondhand smoke harm to its consumers?  
8 A. None that I know of.  
9 Q. Have they taken any action to prevent harm to  
10 the families of smokers?  
11 MR. EATON: Assumes facts not in evidence as to  
12 whether any harm is caused.  
13 THE REPORTER: I'm sorry. What was your answer,  
14 sir?  
15 THE WITNESS: Repeat the question.  
16 (Record read.)  
17 MR. EATON: You got my objection?  
18 THE REPORTER: Yes.  
19 THE WITNESS: I'm not aware of any.  
20 BY MS. FROSTROM:  
21 Q. Have they taken any action to prevent secondhand  
22 smoke harm to the public?  
23 MR. EATON: Same objection.  
24 THE WITNESS: Same answer. Not that I'm aware  
25 of.  
26 BY MS. FROSTROM:  
27 Q. Do you know what action they've taken to achieve  
28 the sale of 40 million cartons of cigarettes a year?  
62  
1 MR. EATON: Argumentative, beyond the scope of  
2 this deposition, lacks foundation.  
3 THE WITNESS: No.  
4 BY MS. FROSTROM:  
5 Q. Are you familiar with the Master Settlement  
6 Agreement?  
7 A. Only what I read in the paper.  
8 Q. What do you understand the Master Settlement  
9 Agreement to be?  
10 A. That some states -- I don't think it was all  
11 states -- won a lawsuit and an agreement with tobacco  
12 companies for a certain amount of money.  
13 Q. Have you ever received any information on the  
14 Master Settlement Agreement within your position at  
15 Costco?  
16 A. No.  
17 Q. Do you understand the Master Settlement  
18 Agreement to affect the operations of your stores in any  
19 way?  
20 A. No.  
21 Q. And are you aware of any change in conduct  
22 within the Costco pharmacy operation as a result of the  
23 MSA?  
24 A. There is none. No.  
25 Q. Okay. If I can just take just a couple moments  
26 to go over this we might be done.  
27 MR. KAMMER: Okay.  
28 (Discussion off the record.)

1 MS. FROSTROM: Standard stipulation for these  
2 depositions. That's all.  
3 MR. EATON: I have no questions.  
4 MR. DI SAIA: No questions.  
5 MR. KAMMER: And I have no questions.  
6 (Whereupon, at 10:55 a.m. the deposition  
7 concluded.)  
8

9 \* \* \* \* \*

10  
11 I hereby declare under penalty of perjury  
12 that the foregoing deposition is my deposition under  
13 oath; that these are the questions asked of me and my  
14 answers thereto; that I have read my deposition and have  
15 made the necessary corrections, additions or changes to  
16 my answers that I deem necessary.  
17

18 IN WITNESS THEREOF, I hereby subscribe my  
19 name, this \_\_\_\_\_ day of \_\_\_\_\_ 2000.  
20  
21  
22

23 CHARLES BURNETT  
24  
25  
26  
27  
28

1 STATE OF CALIFORNIA )  
2 ) SS.  
3 COUNTY OF SAN DIEGO )  
4

5 I, Jeannette K. Jessup, CSR No. 8573, RPR, hereby  
6 certify that I reported in shorthand the above  
7 proceedings on Wednesday, June 21, 2000, at 401 B Street,  
8 Suite 1700, in the City of San Diego, County of San  
9 Diego, State of California; and I do further certify that  
10 the above and foregoing pages, numbered from 5 to 64  
11 inclusive, contain a true and correct transcript of all  
12 of said proceedings.

13 It was stipulated that the original deposition be  
14 delivered to Mr. Kammer for the purpose of having the  
15 witness read, correct and sign the deposition under  
16 penalty of perjury; said original thereafter to be  
17 forwarded to and maintained by Mr. Kammer until the time  
18 of trial.  
19

20 DATED: June 25, 2000.  
21  
22

23 \_\_\_\_\_  
24 JEANNETTE K. JESSUP  
CSR NO. 8573, RPR  
25  
26  
27

